

# NEBRASKA ADMINISTRATIVE CODE

## Title 68 - DEPARTMENT OF CORRECTIONAL SERVICES

### Chapter 3 - MAIL PRIVILEGES

001 Applicability. The provisions of this rule shall apply to all facilities operated by the Department of Correctional Services.

002 Departmental Policy. It is the policy of the Department that inmates committed to its custody be allowed access to the mails so long as state and federal laws and regulations governing the use of the mails are not violated, and security, safety or good order of the facility is not threatened.

003 Contraband in the Mails. For the purpose of this rule, the following materials shall be considered contraband and may be confiscated under the provisions of this section. The term contraband, however, shall not be limited to the designated items, but shall include any others which constitute a threat to the safety, security or good order of the facility.

003.01 The following objects are considered contraband.

003.01A Narcotic, hallucinogenic or other illegally or invalidly possessed drugs.

003.01B Plans for escape routes or the manufacture of weapons, incendiary devices, drugs, or alcohol.

003.01C Alcoholic beverages.

003.01D Weapons of any type.

003.01E Perishable goods, unless approved by the Chief Executive Officer of the facility.

003.01F Maps which are deemed to constitute a threat to the security of the facility or the public as an escape tool.

003.01G Any items which would cause a violation of the Code of Offenses if possessed by an inmate.

003.01H Postage Stamps.(except as allowed in rule 3.007.03 and Community facilities.)

003.02 The following publications or recordings are considered contraband.

003.02A Materials which advocate or are likely to incite violent or illegal activity, including materials which advocate or depict violent or illegal sexual activity.

003.02B Any printed, published, recorded or photographed materials which are deemed by the Chief Executive Officer to constitute a threat to the safety, security, or good order of the facility.

005 Outgoing Mail Procedure.

005.01 There shall be no restrictions on the number of letters that may be written by an inmate, except in the case of verified violation of the rules and regulations of the Department relating to mail. Inmate outgoing mail may be sent out with only the inmate's legally changed name and number. Inmates shall not be allowed to establish credit with sellers of merchandise, or establish business enterprises, without the approval of the Chief Executive Officer of the facility. Inmates shall not be allowed to correspond with persons who have given written notification of objection to such correspondence to the Chief Executive Officer of the facility in which the inmate is incarcerated. Inmates shall not be allowed to correspond with parolees or inmates of other correctional institutions (or the same correctional institution) without the approval of the Chief Executive Officer of both institutions, or in the case of parolees without the approval of the Adult Parole Administrator.

005.02 All outgoing mail will be processed by personnel designated by the Chief Executive Officer of the facility, and may be stamped indicating that it originated in a correctional institution. Such mail shall be examined for enclosures and contraband except in community facilities, where it shall be examined as determined by the Chief Executive Officer. Outgoing mail may be read only when there is clear and convincing evidence that such mail could constitute a threat to the safety, security, or good order of the facility. No sealed envelopes shall be mailed unless the mail is "privileged" as provided below. All sealed envelopes shall be returned to sender along with a written explanation for the return. Each outgoing letter shall bear the name and number of the writer and his/her institutional address in the upper left hand corner on the front of the envelope. An outgoing letter which does not indicate the sender will be retained by the facility for sixty days. If such letter is not claimed by the sender within that time, it will be subject to disposal.

005.03 If any outgoing mail is not allowed to leave the facility, it will be returned to the sender, along with a written explanation of the reasons for the action. If contraband is found to be contained in any outgoing mail, such contraband shall be seized and a receipt given to the inmate. In the event that seizure of the letter containing contraband is necessary for disciplinary purposes, the inmate shall be notified in writing. Official government money confiscated from an inmate's outgoing mail shall be placed in the inmate's confiscated cash account and shall be returned to him or her upon release from the custody of the Department. At the conclusion of any disciplinary action, seized contraband shall be destroyed, retained, or referred to a law enforcement agency, as appropriate. If an inmate desires to challenge a seizure of contraband, he or she may do so by employing the grievance procedure.

## 006 Incoming Mail Procedures.

006.01 Inmates may receive mail from any person or organization they choose except as prohibited by DCS rules and regulations. There shall be no restrictions on the number of letters that may be received, the length of any letter, or the language in which a letter received may be written, except in the case of any verified violation of the rules and regulations of the Department or state and federal laws and regulations relating to mail. Commercial items received through the mail must be prepaid by the inmate. Commercial items not prepaid or publications not in compliance with this rule, will be returned to the sender and written notification of such action sent to the inmate. All publications must be prepaid and shipped directly from the publisher or bookstore. Religious publications and tapes may be sent directly from churches or other approved religious bodies, and are subject to review by the religious coordinator of the facility. Free advertising material, fliers, and other bulk rate mail without the inmate's name and number will not be delivered. Such mail will be returned to sender if possible, or will be destroyed without acknowledgment.

006.02 Mail from inmates in other correctional facilities is presumed to cause a threat to the safety, security, or good order of the facilities, and is presumed to jeopardize the rehabilitative process of the receiver. The Chief Executive Officer at the institution where the inmate addressee resides, or the Adult Parole Administrator in the case of parolees, may issue written permission for inmate/parolee to inmate/parolee correspondence to be delivered. Such permission may be granted when the inmates/parolees are immediate family or have a common interest in a legal matter, and the Chief Executive Officer or Adult Parole Administrator determines that the addressee's receipt of such correspondence will neither threaten the safety, security, or good order of the facility/parole agreement, nor jeopardize the rehabilitative process of the addressee. Mail from one inmate/parolee to another may be read by appropriate correctional staff at the institution of the sender and the receiver.

006.03 All non-privileged incoming mail will be processed by personnel designated by the Chief Executive Officer of the facility. Such mail shall be opened and examined for enclosures and contraband. Incoming mail may be read only when there is clear and convincing evidence that such mail constitutes a threat to the security, safety, or good order of the facility.

006.04 If any contraband is found to be contained in any incoming mail, such contraband will normally be returned to the sender, along with a copy of the written statement which shall be delivered to the addressee. (Incoming publications are governed by 006.08, below.) A written statement will then be delivered to the addressee with a description of the items removed and an explanation of the reasons for the removal. In the event that the mailing of such contraband violates state or federal law, the contraband and the letter, if necessary, shall be referred to proper law enforcement authorities for appropriate action. In the event that seizure of the letter containing contraband is necessary for prosecution purposes, the sender and the inmate shall be so notified in writing. If an inmate desires to challenge a seizure of contraband, he or she may do so by employing the grievance procedure. If a sender desires to challenge a seizure of contraband, he or she may do so by contacting the Chief Executive Officer of the facility in writing.

006.05 All mail shall generally be delivered to the addressee no later than twenty-four hours after its receipt at the facility, with the exception of weekends and holidays, or when mail contains suspected contraband. Packages will generally be delivered within forty-eight hours.

006.06 All mail sent to an inmate must include the name and address of the sender. Any mail which does not include the name and address of sender on the envelope is subject to being read. Mail sent to an inmate will be delivered if the addressee can be determined, unless the mail violates another DCS rule.

006.07 When an inmate has been transferred to another correctional facility, his or her First Class mail shall be forwarded to that facility. First Class mail will be forwarded after release, providing a forwarding address is available. If no forwarding address is available, such mail shall be returned to the sender.

006.08 If a publication considered to be contraband (as defined in Paragraph 003.02 of this Rule) is found in an inmate's incoming mail, the inmate will be given written notice that the publication has been removed and why it is considered to be contraband. The publication will be held by the institution's administrator for sixty days in order to enable the inmate to exhaust the grievance procedure before the publication is destroyed or returned to the sender at the inmate's expense. If the inmate asks that the publication be returned to the sender immediately, it will be returned to the sender, at the inmate's expense.

006.09 Cash is considered contraband and may not be sent to inmates in the mail. Any cash received will be returned to the sender if the sender's name and address are indicated. If cash, checks, or money orders are found in incoming mail and there is no indication of the name and address of the sender, the funds will be placed on the inmate's confiscated cash account and held for the inmate pending the inmate's release from custody. Non-wage funds will be posted to an inmate's institutional account if receipt of these non-wage funds does not otherwise violate a Departmental rule or regulation. Inmates may not receive funds from another inmate, an immediate family member of another inmate (unless the family member is related to both inmates), a volunteer, or a person sending money at the request of another inmate. For purposes of this rule, immediate family member is defined as spouse, parent, step-parent, person acting in the place of parent as documented in the institution file, sibling, step-brother, step-sister, half-brother, half-sister, child, step-child, grandparent, grandchild. Non-wage funds placed in an institutional account may be spent only for those purposes for which state law allows inmate wages to be spent. All funds in an inmate's institutional account will be handled in a manner consistent with statutes governing inmate wages.

006.10 Inmates are to use U.S. Mail for correspondence. The Department of Correctional Services shall not send or receive facsimile transmissions, telegrams, Express mail, e-mail or any other electronic transmission of correspondence on behalf of inmates.

#### 007 Privileged Mail.

007.01 It is the policy of the Department that inmates be allowed to send unopened letters to all federal and state officials, the Director, any Assistant Director, and the Chief Executive of any facility of the Department of Correctional Services; the State Ombudsman or his deputies; judges; members of the paroling and pardoning authority; and members of local, state, and national bar association. The Chief Executive Officer of the facility from which such mail originates may choose to attach to any such outgoing mail, a letter disclaiming any administrative responsibility for the nature or contents of such mail.

007.02 Privileged mail, which is marked as such and from a member of the bar or one of the persons referred to in 007.01, may be opened only in the presence of the inmate/addressee. At the time of opening, such mail shall be examined for contraband, but shall not be read unless there is clear and convincing evidence that such mail constitutes a threat to the safety, security, or good order of the facility. In any case, the name or firm affiliation of any sender must appear in commercial printing on the envelope before such mail shall be accorded privileged status. Any sender using envelopes which do not contain commercially printed names or firm affiliation must acquire the prior written approval of the Chief Executive Officer of the facility. Without such approval, such mail marked privileged will be handled as standard, incoming mail.

007.03 Attorneys of record may include in each mailing sent to inmates one self-addressed stamped envelope.

General Statutory Authority: Neb. Rev. Stat. §83-171, 83-173, 83-183, and 83-4, 135.

Legal Citations: Wolff v. McDonnell, 418 U.S. 539 (1974).

Turner v. Safley, 482 U.S. 78 (1987).